

**ENTERED**

December 01, 2015

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,	§	
	§	
VS.	§	CRIMINAL ACTION NO. 2:13-CR-554
	§	
ROSENDO BARBOSA, <i>et al</i> ,	§	
	§	
Defendants.	§	

**ORDER**

Rosendo Barbosa filed a notice of appeal from this Court's denial of his motion to reduce sentence dated May 20, 2015. D.E. 64. The Fifth Circuit Court of Appeals remanded the case to this Court to determine whether Barbosa can show good or excusable neglect that would entitle him to an extension of time to file his notice of appeal. D.E. 70.

Barbosa's notice of appeal was dated June 19, 2015, and postmarked June 23, 2015. Barbosa's notice of appeal was due on or before June 5, 2015.<sup>1</sup> This Court Ordered Barbosa to file an affidavit explaining the lateness of his notice of appeal and any basis for a finding of good cause or excusable neglect. D.E. 71. The Clerk received Barbosa's affidavit dated November 19, 2015. D.E. 72. Rosendo's affidavit explains that he received this Court's Order denying his motion to reduce sentence on or about June 8, 2015, more than 14 days after the date it was entered on the docket.

Rule 4(b)(4) permits the district court to extend the time to file a notice of appeal if the requested extension is within thirty days of the due date.<sup>2</sup> Fed. R. App. P. 4(6)(4). An extension

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<sup>1</sup> Barbosa is entitled to application of the mailbox rule. Fed. R. App. P. 4(c).

<sup>2</sup> Rule 4(b)(4) states:

may be granted upon a finding of “excusable neglect or good cause.” *Id.* The Rule does not define “good cause” or “excusable neglect.”

The Advisory Committee Notes from 2002 provide explanation of the standards,

The excusable neglect standard applies in situations in which there is fault; in such situations, the need for an extension is usually occasioned by something within the control of the movant. The good cause standard applies in situations in which there is no fault--excusable or otherwise. In such situations, the need for an extension is usually occasioned by something that is not within the control of the movant.


Fed. R. App. P. 4 advisory committee’s note 2002 Amendments, subdivision (a)(5)(A)(ii).

There is little or no prejudice to the government from the short delay. Although the appeal is temporarily stalled, the delay will ultimately have no effect on the full presentation of the merits if the appeal goes forward. Although the notice of appeal was late, it was filed within the period for which an extension of time is available based upon excusable neglect or good cause. There is no evidence of bad faith on Barbosa’s part and the original lateness was occasioned by his failure to receive the order until after the 14 day deadline passed.

### CONCLUSION

The Court FINDS that Barbosa has shown good cause under the applicable flexible standard.

SIGNED and ORDERED this 1st day of December, 2015.

  
Janis Graham Jack  
Senior United States District Judge

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Upon a finding of excusable neglect or good cause, the district court may-before or after the time has expired, with or without motion and notice-extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Fed. R. App. P. 4(b)(4).